



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/166830

PRELIMINARY RECITALS

Pursuant to a petition filed June 23, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on September 24, 2015, at Green Bay, Wisconsin.

The issue for determination is whether the respondent has established an overpayment of FS benefits to petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Wisconsin who received FS in Brown County.
2. On March 4, 2015, the Brown County Sheriff mailed to petitioner a summons to appear in court for violating Brown County ordinance 30.05(2), fraud in public assistance. The specific allegation

was that petitioner trafficked FS at the [REDACTED] store, which did not have sufficient food in stock for a person to make purchases in the amounts paid by petitioner.

3. Court records indicate that a bench trial occurred on April 29, 2015, and petitioner was found guilty of violating Brown County ordinance no. 30.05(2) by Order of the Circuit Court on June 4, 2015. However, following a subsequent charging amendment, the disposition in this case was amended to guilty due to not contest plea. See, Wisconsin Circuit Court Access website, <https://wcca.wicourts.gov/courtRecordEvents.do;jsessionid=DE7EA122E8CF7991788807DC61340763.render6?caseNo=2014FO000778&countyNo=5&cacheId=9C7B7AE420381D0FEA0233ABA24BED1E&recordCount=1&offset=0&linkOnlyToForm=false&sortDirection=DESC>.
4. On May 14, 2015, the respondent notified petitioner that she was overpaid FS benefits in 2014 because she trafficked FS, claim nos. [REDACTED] and [REDACTED]. The amount was determined by adding together large purchases made at the stores that had been investigated.

DISCUSSION

The Department is required to recover all FS overpayments. Benefits that are trafficked are considered to be overpayments. 7 C.F.R. §273.18(a)(1)(ii). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2.

A trafficking overpayment is considered an Intentional Program Violation (IPV) claim as defined in 7 C.F.R. §273.16. 7 C.F.R. §273.18(b)(1). The agency shall establish the amount of such a claim by the individual's admission, adjudication, or the documentation that forms the basis of the trafficking determination. 7 C.F.R. §273.18(c)(2).

It is evident that before an overpayment based upon trafficking can be entered, a trafficking IPV first must be established. In this case there has been no IPV adjudication or determination. The OIG imposed the IPV sanction against petitioner solely based upon an entry of a no contest plea in an ordinance violation citation. In petitioner's concurrent case, no. FOO/166829, I initially sustained the IPV finding. However, I subsequently granted the petitioner's request for a Rehearing after receiving information that the bench trial verdict had been replaced by a no-contest plea disposition. At this time, it appears that the court judgment in the ordinance violation action is insufficient to establish an IPV. Thus it follows that the overpayment based upon the alleged IPV also cannot stand unless it is adjudicated by a lawful IPV proceeding.

CONCLUSIONS OF LAW

The alleged overpayment for trafficking is invalid because it has not been adjudicated in an IPV proceeding.

THEREFORE, it is

ORDERED

That the matter be remanded to the OIG with instructions to rescind overpayment claim nos. [REDACTED] and [REDACTED] against petitioner, within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

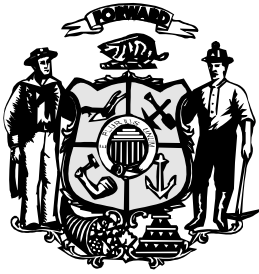
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of October, 2015

\sPeter McCombs
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 13, 2015.

Public Assistance Collection Unit
Public Assistance Collection Unit
Division of Health Care Access and Accountability
Attorney [REDACTED]